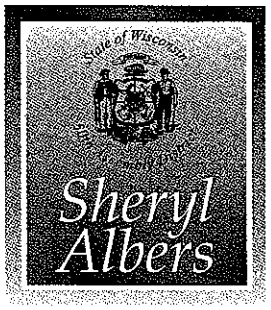

Testimony of Rep. Sheryl Albers on Assembly Bill 472
Assembly Committee on Judiciary & Ethics
October 18, 2007

Chairman Gundrum and committee members thank you for holding a public hearing on Assembly Bill 472. Assembly Bill 472 (AB 472) addresses concerns raised by the courts regarding prosecution decisions based on certain payments to organizations or agencies. This bill eliminates required payments of contribution surcharges to crime prevention organizations (CPO) and law enforcement funds.

Currently a prosecutor is prohibited from using payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund in exchange for lesser charge or from dismissing or amending a citation. The language contained in AB 472 would preclude a prosecutor cutting a deal where in exchange for payment to one of the aforementioned funds, a prosecutor foregoes or refrains from prosecuting (filing) a case where probable cause already exists. In recent years the practice of payment to crime prevention organizations or law enforcement agency's crime prevention fund has come under scrutiny for several reasons:

1. It is inappropriate for the court system to serve as a "fund raising mechanism" for non-court organizations.

2. The perception by the general public is that donations to a CPO becomes a means for a wealthy individual to buy their way out of a being charged or to avoid trial, sentence or other orders. This came to light when DA's in the Fox Valley engaged in this practice.

3. This circumvents the budgeting process of the Legislature. Elected bodies are charged with the distribution and redistribution of funds not a single elected individual – a judge or DA or an ADA.

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4. Collecting the statutory mandated fines, forfeitures, assessments and surcharges is difficult. Adding this discretionary CPO assessment will only result in greater inequities in terms of penalties for crimes, as it adds yet another arbitrary and discretionary component to judicial decision making.

Assembly Bill 472 should remove the appearance of impropriety on the part of the court. In an attempt to provide clarity to the courts, a June 2005 Attorney General's opinion was issued and in the conclusion it states and I quote:

> *"I also appreciate the vital role that community organizations serve in crime prevention, even if their primary purpose is not crime prevention. However, I do not believe that the statutes, as currently drafted, authorize court committees to distribute contribution surcharges. Likewise, a question arises as to whether private nonprofit organizations providing vital community services may receive contribution surcharges unless they have a primary purpose to prevent crime, encourage crime reporting or assist in the apprehension of offenders."*

There is no doubt that organizations to date that have been awarded funding are generally recognized as performing worthwhile, meritorious work. However, levying an assessment, in lieu of penalties set by statute allows the judicial system to ignore legislative dictates.

This practice has occurred in Wisconsin and as a result this draft is offered for your consideration.

There simply are too many inconsistencies as to whether an organization is appropriate to receive funds, as to whether this fund should be used as a primary – or significant – fund raising tool for nonprofit organizations, and finally the added burden on the court to actually to collect the assessments is increasingly more difficult. Courts around the state have chosen to opt out of the program because of these concerns. CPO's reliance on such funds is equally disturbing.

I believe AB 472 is a necessary change so that the courts may continue to do the job they are intended to do and not be perceived as another fundraising tool for the community.

This bill has the support of the Director of State Courts and many judges throughout the state written testimony has been provided to you and I'm the Attorney General Lautenschlager's letter to the Director of State Courts committee to that effect.

Thank you again for hearing AB 472. I would be happy to answer any questions the committee may have.

WISCONSIN
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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Judiciary and Ethics

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate

DATE: October 18, 2007

SUBJECT: Support for Assembly Bill 472

The Wisconsin Counties Association (WCA) supports Assembly Bill 472, relating to prosecution decisions based on certain payments to organizations or agencies and eliminating required payment of contribution surcharges to crime prevention organizations and funds.

Attached please find a copy of Wisconsin Counties Association 2006 Conference Resolution 22 which describes our rationale for support.

Thank you for considering our comments.

Wisconsin Counties Association

2006 Conference Resolution 22

Offered for consideration this 18th Day of September, 2006 by

Marathon County

Relating to

Repeal of §973.06(1)(f) and §973.09(1x)(a) and §973.09(1)(b) and §753.40 and §755.20 of the Wisconsin Statutes

WHEREAS, §973.06(1)(f), and §973.09(1x)(a) and §973.09(1)(b) and §753.40 and §755.20 Wisconsin Statutes authorize courts to order contributions by defendants to a private nonprofit organization whose primary purpose is to prevent crime and a law enforcement agency's crime prevention fund, and that such contributions may be ordered in lieu of forfeitures, fines and costs; and

WHEREAS, all counties, including Marathon County, are experiencing ever-tightening budgetary constraints; and

WHEREAS, court-ordered fines and costs provide operating funds to each county and revenue to the state of Wisconsin; and

WHEREAS, funding of private nonprofit organizations and law enforcement agency's crime prevention funds through the courts in lieu of forfeitures, fines and costs is contrary to the fiscal interests of the counties and the state of Wisconsin; and

WHEREAS, while the work of such organizations is worthwhile, revenue for such organizations is better derived through non-court sources; and

WHEREAS, each county clerk of court office must collect all court-ordered financial obligations, including contributions to private nonprofit crime prevention organizations and law enforcement agency's crime prevention funds, as well as provide forms for and collect annual reports from such organizations; and

WHEREAS, the work to collect such contributions strains county resources for the sole benefit of such private organizations; and

WHEREAS, collection efforts by the clerk of court office are best focused on fines, forfeitures, assessments, surcharges and costs that directly benefit the taxpayers of each county and of this state; and

WHEREAS, such "crime prevention" surcharges are not assessed in a uniform manner; and

WHEREAS, such court-ordered contributions to private nonprofit crime prevention organizations and law enforcement agency's crime prevention funds creates a public perception that justice can be purchased through our courts and results in a perception that our courts are biased towards the wealthy; and

WHEREAS, such biased public perception diminishes the confidence of the public in our courts, as well as in county and state government.

NOW, THEREFORE, BE IT RESOLVED that the Wisconsin Counties Association, in conference assembled, does hereby ordain as follows:

That we support the repeal of §973.06(1)(f), and §973.09(1x)(a) and §973.09(1)(b) and §753.40 and §755.20 Wisconsin Statutes.

STEERING COMMITTEE RECOMMENDATION TO THE RESOLUTIONS COMMITTEE: Adopt.

RESOLUTIONS COMMITTEE ACTION: Motion by ADLER, second by CARNEY, to adopt. Motion carried.

RESOLUTIONS COMMITTEE RECOMMENDATION: Adopt.

2006 CONFERENCE ACTION: Motion by EAU CLAIRE, second by WOOD, to adopt. Motion carried.

Caption:

Support the repeal of §973.06(1)(f), and §973.09(1x)(a) and §973.09(1)(b) and §753.40 and §755.20 Wisconsin Statutes (contributions by defendants to a private nonprofit organization whose primary purpose is to prevent crime and a law enforcement agency's crime prevention fund).

JUDICIAL AND PUBLIC SAFETY

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STATE OF WISCONSIN

THIRD JUDICIAL DISTRICT

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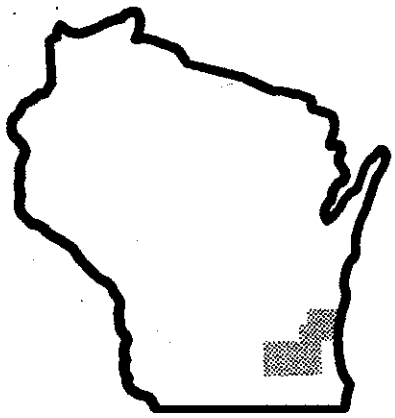

October 9, 2007

To the Members of the Assembly Judiciary & Ethics Committee
c/o Representative Mark Gundrum, Chair

Thank you for this opportunity to comment upon AB472. I strongly support this Bill, as do the judges in my area. I encourage you to support it and report it out for a vote by the Assembly.

While crime prevention organizations are certainly a worthwhile part of our community, that is not the issue. The issue is the use of judicial coercion to collect money from criminal defendants for private crime prevention organizations. I think that is a bad practice.

Selecting the recipients of government collected funds is largely a legislative function, not a judicial one. I don't believe that judges should generally be involved in such a process. I don't have any particular ability to review and monitor the activities of these private organizations. Leave that to the Legislature or County Boards. Don't put judges, elected to resolve legal disputes, in the middle of private fundraising efforts.

Money collected from criminal defendants has always gone for restitution for victims and to the court system and government to offset the cost of justice operations. Allowing funds to be diverted to private charitable organizations amounts to a diversion from the government's purse, and as discussed above, judges are determining how the money should be spent instead of legislators. If a defendant has the funds for monetary payments, I believe those funds should benefit the taxpayers who finance the criminal justice system

Allowing the ordering of contributions to crime prevention organizations is an invitation to abuse. This point was starkly made in the investigation surrounding the criminal activities of a former Fox Valley-area District Attorney. Placing this authority with judges encourages groups to lobby and pressure judges for funds. In my county, for a time, the sole recipient of these funds was an organization founded and run by the DA (now former). His office was regularly recommending court ordered contributions to the DA's charity. Judges in other parts of the state have told me that some citizens want to make this a judicial election issue. Judge candidate A should promise to order lots of donations to charity X, or vote for her opponent. That is a corrosive result.

I apologize that I was unable to appear personally at your committee's public hearing to answer questions, but I would be happy to discuss this with you or your staff. Please feel free to call me. Thank you for your attention.

Sincerely yours,

J. Mac Davis

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
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Shirley S. Abrahamson
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A. John Voelker
Director of State Courts

October 16, 2007

The Honorable Mark Gundrum
Chair, Assembly Committee on Judiciary and Ethics
Room 119 West, State Capitol
Madison, Wisconsin

RE: AB 472, Eliminating Payments to Crime Prevention Organizations

Dear Representative Gundrum:

The Committee of Chief Judges strongly supports Assembly Bill 472 that would eliminate the authority of the courts to impose crime prevention organization (CPO) assessments. CPO assessments have caused endless concerns to judges, clerks of court, court administrators and legislators since their inception. We have studied the CPO assessment process at great length and concluded the most appropriate public policy is to request that they be eliminated.

There is no question most of the organizations that receive funding via CPO contributions are extremely worthwhile organizations. This legislation should not be viewed as a judgment about the work or the worthiness of those organizations.

Many judges have individually made the decision to terminate the CPO process in their counties. In the Ninth Judicial Administrative District, the judges adopted a uniform policy to refrain from imposing CPO assessments. The problem with CPO assessments is the nature of the process itself. We have identified the following concerns that lead us to this recommendation:

It is inappropriate for the court system to serve as a "fund raising mechanism" for noncourt organizations

Judges are strictly forbidden from fundraising for any organization on their own time. Fundraising via their role as judicial officers for CPOs appears to undercut the ethical tenets by which we operate. Most judges feel collecting money for noncourt organizations is not the proper role for a court, regardless of the value of the organization. Judges have found themselves subject to lobbying by various groups seeking funding, and that is of significant concern.

The public perception of this process is generally negative, regardless of the safeguards put into place.

Donations to a CPO are often perceived as a means for a defendant to buy his or her way out of either more serious charges or a more serious sentence. The direction of money to CPOs

by the courts inevitably results in a perception of bias concerning the judiciary, a perception that negatively impacts the image of the court and undercuts the validity of the court process. Justice should be blind to a person's ability to pay money.

The definition of a crime prevention organization has never been fully clarified although the courts have attempted to do so.

It has always been difficult to clearly identify what constitutes a "crime prevention organization." The lack of clarity has led to litigation challenging some CPO assessments. Judges are left with only minimal guidance when requests are made from charities, groups or organizations to be included among those to share in CPO funds. We have attached a 2005 opinion from the Attorney General's office that outlines some of the definitional and practical problems of CPOs.

The collection process in most counties is already strained from efforts to collect the statutory mandated fines, forfeitures, assessments and surcharges.

Adding on discretionary CPO assessments to criminal convictions simply increases the burden on the county Clerks of Circuit Court offices. Although the concept of "making the criminals pay" for CPOs is a worthy one, in this time of economic difficulties the taxpayers are better served by the increased collection of fines and forfeitures which directly fund county and state budgets.

The potential for abuse or for questionable practices involving CPOs can be avoided.

There have been questionable practices uncovered involving CPO assessments. Monies have not always been used for appropriate purposes. The potential for abuse of this process is real. These problematic situations were enough to convince us collectively that the CPO process is seriously flawed.

The Committee of Chief Judges has reviewed the CPO process for some time and has expressed significant concern about it for a long period of time. Also, the court system's Policy and Planning Advisory Committee (PPAC) has also been concerned with the CPO process and, in particular, compliance with the reporting/nonreporting requirements. That committee is supportive of legislation to eliminate the CPO process.

We thank you for holding a public hearing on AB 472 and urge you to recommend it for passage. We believe you will agree that it will be sound public policy.

Respectfully submitted,

KITTY BRENNAN
Chief Judge
First Judicial District

JOHN STORCK
Chief Judge
Sixth Judicial District

GERALD PTACEK
Chief Judge
Second Judicial District

WILLIAM DYKE
Chief Judge
Seventh Judicial District

J. MAC DAVIS
Chief Judge
Third Judicial District

SUE BISCHEL
Chief Judge
Eighth Judicial District

DARRYL DEETS
Chief Judge
Fourth Judicial District

DOROTHY BAIN
Chief Judge
Ninth Judicial District

C. WILLIAM FOUST
Chief Judge
Fifth Judicial District

BENJAMIN PROCTOR
Chief Judge
Tenth Judicial District